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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

CAROL WILSON FINE ARTS, INC., an

Civil No. 3:14-CV-00587-AA

Oregon corporation,

Plaintiff,

v.

ZIFEN QIAN,

an individual,

Defendant.

MOTION OF DEFENDANT ZIFEN QIAN'S RESPONDING

MOTION OF PLAINTIFF'S PARTIAL SUMMARY JUDGMENT

I

The INTRODUCTION in Motion of Plaintiff's Partial Summary Judgment is incorrect and misleading. Please read Defendant Answer to plaintiff's complaint and Defendant Initial Disclosure.

II

The MOTION in Motion of Plaintiff's Partial Summary Judgment is unjustified. Please read Defendant Answer to plaintiff's complaint and Defendant Initial Disclosure.

III

In the KEY UNDISPUTABLE FACTS of Motion of Plaintiff's Partial Summary Judgment, the sentence of "During those twenty-one years, Mr. Qian worked under Carol Wilson Fine Arts' control and direction" must be clarified that such "worked", "control and direction" were only for the job duty of graphic and product format design. It is nothing to relate this case of Zifen Qian's painting, because painting is not part of his employment agreement. Also, based on the constitutional rights the freedom of the way to speak, the freedom of the way to dress and the

freedom of research expression as well as the freedom of the way of signature during the work time are uncontrollable and cannot be directed.

In the KEY UNDISPUTABLE FACTS of Motion of Plaintiff's Partial Summary Judgment, the sentence of "During those twenty-one years, Mr. Qian created many original pieces of art while being paid by Carol Wilson Fine Arts" is incorrect. That "being paid" is job duty of graphic and product format design. CWFA did not pay Zifen Qian's none employment paintings being published on CWFA products except limited bonus if could be considered partial loyalty. During 21 years Zifen Qian has created many paintings including part of them have been presented to CWFA and to be published, and some of the original paintings and roughs have left in CWFA office. Some of those paintings were completed at Zifen Qian's home studio then brought to CWFA office as options to publish.

IV

Plaintiff's claim in Motion of Plaintiff's Partial Summary Judgment is based on ignoring two undisputable facts of 1, painting creation is not part of Zifen Qian's employment agreement and 2, Zifen Qian's all original paintings during the 21 years were independently created without any other person's control and direction because those are representations of his own style, philosophy, sprit, emotion and personality. Therefore the claim has no legal bases to support. The following is more detail to respond the Motion of Plaintiff's Partial Summary Judgment:

1. Those plaintiff's exhibits of emails in the motion have shown the examples of typical communications between author and publisher. Based on the uniqueness of the publication, such email communications would happen between Gary Spector (publisher) and any artist (author) who wants to his or her painting to be published on CWFA portfolio and greeting card. CWFA has published other freelance artist's paintings on its portfolios and greeting cards with the same way of processing to ask some artists to show roughs and to cut and paste copies of their paintings for fitting formats of the unique products. But no those artists would accept Gary Spector to control and direct their original painting creations because they have to keep identities and copyrights.
2. The emails in the motion have shown that Zifen Qian presented his paintings to Gary Spector (publisher) for options of being published on portfolios and greeting cards. As an author Zifen Qian always welcome comments and suggestions and try to better cooperate with publisher. Zifen Qian has done the same way to present his watercolors to other publishers. For example, Zifen Qian has 40 watercolors to be illustrated on a book "Entertaining with Betsy Bloomingdale" published in 1994. The publisher provided reference photos and Betsy Bloomingdale has shared personal items and asking to be

depicted in Zifen Qian's watercolors. Zifen Qian has shown his roughs to the publisher and listened comments and suggestions from the publisher as well. Such cooperation is for insuring the book to be better publishing result. And such cooperation doesn't change Zifen Qian's authorship and copyright of all 40 watercolors illustrated on the book. And such cooperation is nothing to do with publisher "control" and "direct" author's original painting creations.

3. Gary Spector tried to use those emails to mix Zifen Qian's daily employment duty with none employment painting presentation of being considered publishing. As daily job duty Zifen Qian has to design formats of portfolio, greeting card and other paper products which mostly were graphic design by using computer software and traditional none computerized cutting, pasting, collaging and thinking of future product forms and trends, as well as to help printing related work. But the job duty of this employment is not about creating personal style original academic painting, otherwise the way of pay and rate of pay should be totally different. Gary Spector and Carol Wilson certainly understood that such hourly pay should not include Zifen Qian's original painting creation and copyright, that's why the contract of employment agreement did not indicate painting creation as part of Zifen Qian's job duty.
4. About process of publishing any painting to CWFA greeting cards and portfolio stationaries, Gary Spector can pick what he liked paintings Zifen Qian presented or other painter's paintings submitted from elsewhere worldwide to be published on CWFA greeting cards and portfolios. He can have suggestions and comments on those paintings for potential to be published on CWFA portfolios and greeting cards. But as a professional painter Zifen Qian has his own knowledgeable judgment of how to create his paintings that represent his own identity. Nobody can control or direct Zifen Qian's style, philosophy, sprit, emotion and personality of his painting. A piece of painting is a symbol of an artist's identity includes style, philosophy, sprit, emotion and personality. If a painting is done under control and direct by somebody other than artist himself, that kind of painting in professional term is called "production painting without artist's identity". Such painting is completely different than creative painting which represents artist's style, philosophy, sprit, emotion and personality. Zifen Qian would not recognize such "production painting without artist's identity" as his painting, and never done such painting, and would not sign his name on such painting, and would not allow print his name on the publication along with such painting. That is a basic commonsense for any professional artist and any publisher. That is also a basic human rights principle.

V. CONCLUSION

As long as the painting creation is not indicated as job duty in an employment agreement, as long as the painting represents painter's style, philosophy, sprit, emotion

and personality, as long as the painting has independent academic value beyond one publication need, that painting's copyright must belong to the author (painter) pursuant US Copyright Act and Nimmer Copyright Notes.

Zifen Qian as a lawful and natural author of every his painting has done during the 21 years holds copyrights of his own paintings including those have been selected by Carol Wilson Fine Arts, Inc. to be published on greeting cards and related paper products. Those painting creations were not part of his Employment Agreement. Those were part of Zifen Qian's academic researches and practices. Zifen Qian never sign any agreement relates to his paintings with Carol Wilson Fine Arts, Inc. All Zifen Qian's paintings have been published on CWFA greeting cards have printed "Watercolor by Zifen Qian" as author name on the back of each card and his signatures have been printed along with his paintings on CWFA publications as well. Those paintings represent Zifen Qian's style, philosophy, spirit, emotion and personality with independent academic value beyond CWFA publication need. Those paintings are important part of Zifen Qian Paintings and will be remain in the art history and 100 years from now people will still recognize the fact.

A handwritten signature in black ink, appearing to read 'Zifen Qian', with a long, sweeping horizontal line extending to the right.

Zifen Qian

Date: July 1, 2014

2811 Beacon Hill Drive

West Linn, OR 97068

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 5th, 2014, a copy of MOTION OF DEFENDANT ZIFEN QIAN'S RESPONDING MOTION OF PLAINTIFF'S PARTIAL SUMMARY JUDGMENT was served by US Mail and email to:

Stephen J. Joncus, OSB #013072

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Attorney for Plaintiff

A handwritten signature in black ink, appearing to read 'Zifen Qian', is written above the printed name.

By: Zifen Qian

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